

IN THE SUPREME COURT OF NORTH CAROLINA

Order Adopting Amendments to Rule 3 of the General Rules of Practice for the Superior and District Courts

Rule 3 is hereby amended to read as follows:

An application for a continuance shall be made to the presiding judge of the court in which the case is calendared.

When an attorney has conflicting engagements in different courts, priority shall be as follows: Appellate Courts, Superior Court, District Court, Magistrate's Court.

At mixed sessions, criminal cases in which the defendant is in jail shall have absolute priority.

The General Rules of Practice for the Superior and District Courts are amended by adding a new Rule 3.1 to read:

RULE 3.1 GUIDELINES FOR RESOLVING SCHEDULING CONFLICTS

(a) In resolving scheduling conflicts when an attorney has conflicting engagements in different courts, the following priorities should ordinarily prevail:

1. Appellate courts should prevail over trial courts.

2. Any of the trial court matters listed in this subdivision, regardless of trial division, should prevail over any trial court matter not listed in this subdivision, regardless of trial division; there is no priority among the matters listed in this subdivision:

- any trial or hearing in a capital case;

- the trial in any case designated pursuant to Rule 2.1 of these Rules;

- the trial in a civil action that has been peremptorily set as the first case for trial at a session of superior court;

- the trial of a criminal case in superior court, when the defendant is in jail or when the defendant is charged with a Class A through E felony and the trial is reasonably expected to last for more than one week;

- the trial in an action or proceeding in district court in which any of the following is contested:

- termination of parental rights,

- child custody,

- adjudication of abuse, neglect or dependency or disposition following adjudication,

- interim or final equitable distribution,

- alimony or post-separation support.

3. When none of the above priorities applies, priority shall be as follows: superior court, district court, magistrate's court.

(b) When an attorney learns of a scheduling conflict between matters in the same priority category, the attorney shall promptly give written notice to opposing counsel, the clerk of all courts and the appropriate judges in all cases, stating therein the circumstances relevant to resolution of the conflict under these guidelines. When the attorney learns of the conflict before the date on which the matters are scheduled to be heard, the appropriate judges are Senior Resident Superior Court Judges for matters pending in the Superior Court Division and Chief District Court Judges for matters pending in the District Court Division; otherwise the appropriate judges are the judges presiding over those matters. The appropriate judges should promptly confer, resolve the conflict, and notify counsel of the resolution.

(c) In resolving scheduling conflicts between matters in the same priority category, the presiding judges should give consideration to the following:

- the comparative age of the cases;
- the order in which the trial dates were set by published calendar, order or notice;
- the complexity of the cases;
- the estimated trial time;
- the number of attorneys and parties involved;
- whether the trial involves a jury;
- the difficulty or ease of rescheduling;
- the availability of witnesses, especially a child witness, an expert witness or a witness who must travel a long distance;
- whether the trial in one of the cases had already started when the other was scheduled to begin.

(d) Nothing in these guidelines is intended to prevent courts from voluntarily yielding a favorable scheduling position, and judges of all courts are urged to communicate with each other in an effort to lessen the impact of conflicts and continuances on all courts.

Adopted by the Court in Conference this the 15th day of August 2002. This amendment shall be promulgated by publication in the Advance Sheets of the Supreme Court and the Court of Appeals. This amendment shall also be published as quickly as practical on the North Carolina Judicial Branch of Government Internet Home Page (<http://www.nccourts.org>).

Edmunds, J

For the Court
